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Of Attorneys for Defendants City of Beaverton and Jason Buelt

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

**HAO XENG VANG**

Plaintiffs,

No. Cv 09-928-BR

v.

NOTICE OF REMOVAL

**CITY OF BEAVERTON and JASON  
BUEL**T

Defendants.

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that defendants hereby remove this action from the Circuit Court of the State of Oregon for the County of Washington to the United States District Court for the District of Oregon.

1. Defendants are parties in a civil action brought against them in the Circuit Court of the State of Oregon for the County of Washington entitled, *Hoa Xeng Vang v. City of Beaverton, Jason Buelt*, Case No. C094089CV. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings and orders served on defendants at the time of this removal, consisting of the Complaint and Summons, are attached hereto as Exhibit A.

2. The state court case was commenced and a Complaint filed on or about July 10, 2009. Defendant City of Beaverton was served with a state court summons and a copy of the

Complaint on or about July 24, 2009. Defense counsel is currently investigating whether service on defendant Jason Buelt was made.

3. The filing of this Notice of Removal is within thirty (30) days from receipt of the initial pleading pursuant to 28 U.S.C. § 1446(b).

4. This action is of a civil nature over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1343(a)(3) and 28 U.S.C. § 1331, in that plaintiff alleges a suit for damages pursuant to 42 U.S.C. § 1983 and the State Court action is, therefore, removable.

5. The U.S. District Court for the District of Oregon has supplemental jurisdiction over plaintiff's state law causes of action. Plaintiff's states law causes of action are joined with the federal claims and, therefore, may be removed pursuant to 28 U.S.C. § 1441(c). The U.S. District Court for the District of Oregon also has discretion to adjudicate state law claims pursuant to 28 U.S.C. § 1337(a).

6. This Court is the District Court of the United States for the district and division embracing the place where the state court action is currently pending and is, therefore, the appropriate court for removal pursuant to 28 U.S.C. § 1441(a).

7. Written notice of the filing of this Notice of Removal will be served on counsel for plaintiff and a copy of the Notice will be filed with the Clerk of the Circuit Court of the State of Oregon for Washington County as provided under 28 U.S.C. § 1446(a).

8. This Notice of Removal is signed pursuant to FRCP 11.

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WHEREFORE, defendants pray that this Notice of Removal be filed; that the action bearing Civil Case No. C094089CV in the Circuit Court of the State of Oregon, Washington County, be removed to and proceed in this Court; that no further proceedings be had in said case in the Circuit Court of the State of Oregon, Washington County.

Respectfully Submitted this 11th day of August, 2009.

HOFFMAN HART & WAGNER, LLP

By:



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Steven A. Kraemer, OSB No. 882476  
Gregory R. Roberson, OSB No. 064847  
Of Attorneys for Defendants  
(503) 222-4499

1                           CERTIFICATE OF SERVICE

2                           I hereby certify that on the 11<sup>th</sup> day of August, 2009, I served the foregoing NOTICE OF  
3 REMOVAL, on the following party at the following address:

4                           Kevin E Lucey  
5                           Attorney at Law  
6                           621 SW Morrison St #1412  
7                           Portland OR 97205  
8                           Of Attorneys for Plaintiff

9                           by mailing to him a true and correct copy thereof, certified by me as such, placed in sealed  
10 envelopes addressed to him at the addresses set forth above, and deposited in the U.S. Post  
11 Office at Portland, Oregon on said day with postage prepaid.

12                             
13                           

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14                           Gregory R. Roberson

Please log liab claim  
and return

CC/S

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF WASHINGTON

HAO XENG VANG,

Plaintiff,

v.

CITY OF BEAVERTON and  
JASON BUELT,

Defendants.

Case No. C094089CV

SUMMONS

DOL: 8/27/08

TO: City of Beaverton and its attorney, Alan Rappleyea, City Attorney of Beaverton, 4755 SW Griffith Drive,  
Beaverton, OR 97076.

You are hereby required to appear and defend the complaint filed against you in the above entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiff(s) will apply to the court for the relief demanded in the complaint.

NOTICE TO THE DEFENDANT: READ THESE PAPERS CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney, or, if the plaintiff does not have an attorney, proof of service on the plaintiff.

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

K E Lucey

SIGNATURE OF ATTORNEY FOR PLAINTIFF

Kevin E. Lucey, OSB #92379  
1412 American Bank Building  
621 SW Morrison St.  
Portland, Oregon 97205  
Tel: 503/ 222-7178

STATE OF OREGON, County of Multnomah ) ss.

I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above entitled action.

K E Lucey

ATTORNEY OF RECORD FOR PLAINTIFF(S)

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.

K E Lucey

ATTORNEY OF RECORD FOR PLAINTIFF(S)

EXHIBIT

A

PAGE 1 OF

I CERTIFY THAT THIS IS A  
TRUE COPY OF THE ORIGINAL

KE Lucey  
ATTORNEY FOR

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF WASHINGTON

HAO XENG VANG,

Plaintiff,

v.

CITY OF BEAVERTON and  
JASON BUELТ,

Defendants.

Case No.

*Co 94089 CV*

COMPLAINT

(Negligence; False Arrest; Conversion;  
42 USC § 1983)

(Claim for more than \$50,000;  
Not subject to mandatory arbitration)

Plaintiff alleges:

FACTS COMMON TO ALL CLAIMS FOR RELIEF

1.

Plaintiff brings his Oregon common law claims pursuant to the Oregon Tort Claims Act, ORS 30.260 *et seq.* Plaintiff has complied with the Oregon Tort Claims Act by notifying defendants of his intent to sue within 180 days of plaintiff's loss alleged herein.

2.

Defendant City of Beaverton is a duly organized city under Oregon law, ORS Chapters 221- 227, and is a public body liable for the tortious conduct of its agents and employees pursuant to ORS 30.260(4) and 30.265(1). Beaverton Police Department employees are employees of defendant City of Beaverton. All employees of the City of Beaverton herein were acting within the course and scope of their employment at all times material to this Complaint.

PAGE 1 - COMPLAINT

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EXHIBIT A  
PAGE 2 OF 2

1 3.

2 On all claims under 42 USC §1983, all City of Beaverton employees herein were  
3 acting under color of law and plaintiff is entitled to his reasonable attorney fees incurred herein  
4 pursuant to 42 USC §1988.

5 4.

6 On or about August 27, 2008, plaintiff witnessed a friend being detained by  
7 Beaverton Police Department officers outside of the Valley Lanes Bowling Center in an area open  
8 to the public. Plaintiff believed that there was no justification for the detention and began to  
9 record the events using his cell phone. As plaintiff made video recordings of the detention and  
10 subsequent arrest of another of his friends, he narrated the event using the audio recording  
11 capabilities of his cell phone. Plaintiff's cell phone was unconcealed during the time of the  
12 recording.

13 5.

14 The Beaverton police officers allowed plaintiff to record the events that evening for  
15 about ten minutes. After ten minutes, officer Jason Buelt seized plaintiff's cell phone, arrested  
16 plaintiff and charged him with violating ORS 165.543 (Interception of Communications). The  
17 police lodged plaintiff in the Washington County jail.

18 6.

19 On or about August 28, 2008, Washington County released plaintiff from jail.  
20 However, the Beaverton Police Department did not return plaintiff's cell phone to him at that time.  
21 By reason and belief, the Beaverton Police Department searched plaintiff's cell phone without a  
22 warrant and without his consent while it was in their custody. On or about September 8, 2009, the  
23 City of Beaverton issued a "no complaint" in the criminal case against plaintiff.

24 PAGE 2 - COMPLAINT

EXHIBIT A  
PAGE 3 OF 1

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7

On or about October 22, 2008, the Beaverton Police Department finally released plaintiff's cell phone to plaintiff. At that time plaintiff learned that audio and video files containing the recording of the arrest had been deleted from his cell phone. By reason and belief, the person who deleted this file was Beaverton Police Officer Jason Buelt. Officer Buelt deleted the file on or about October 13, 2008.

8.

Oregon Revised Statute 165.543(1), the statute that plaintiff was arrested for violating, provides that, "any person who willfully intercepts, attempts to intercept or procures any other person to intercept or attempt to intercept any wire or oral communication where such person is not a party to the communication and where none of the parties to the communication has given prior consent to the interception, is guilty of a Class A misdemeanor." Oregon Revised Statute 165.543(2) provides that an "oral communication" has the meaning given in ORS 133.721. Oregon Revised Statute 133.721(7)(a) defines "oral communication" as "any oral communication...uttered by a person exhibiting *an expectation that such communication is not subject to interception* under circumstances justifying such expectation." Oregon Revised Statute 133.721(5) clarifies that "interception means the acquisition, by listening or recording, of the contents of any...oral communication through the use of any electronic, mechanical or other device." Therefore, in order for an "interception" of an "oral communication" to be a violation of ORS 165.543, the parties to the conversation being intercepted must have had a reasonable expectation of privacy.

PAGE 3 - COMPLAINT

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9.  
The officers detaining and arresting plaintiff's friends on or about August 27, 2008,  
did not have a reasonable expectation of privacy as to their statements (made during the arrest of  
plaintiff's friend) that plaintiff may have recorded with his cell phone. The arresting officers knew  
that they did not have a reasonable expectation of privacy as to statements made aloud and in a  
public place.

8 FIRST CLAIM FOR RELIEF – NEGLIGENCE – COUNT ONE  
9 (Against defendant City of Beaverton only)  
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10.  
Defendant City of Beaverton has a duty to provide ongoing training to its police  
officers on the laws of the State of Oregon that its officers enforce and changes or clarifications of  
those laws. By reason and belief, the City regularly supplies such training to its police officers.  
Furthermore, it is reasonably foreseeable that if the officers do not receive such training, they will  
make mistakes as to what comprises a violation of the law. By reason and belief, the City of  
Beaverton failed to train its police officers on the requirement of a reasonable expectation of  
privacy by the parties to a conversation being recorded by a third party before a violation of ORS  
165.543 occurs. Further, by reason and belief, the arresting officers were ignorant of this  
requirement and as result arrested and jailed plaintiff without probable cause existing to believe  
that plaintiff had violated the statute.

21  
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11.  
As a result of this negligence, plaintiff incurred economic damages of \$925 in  
attorney fees to defend himself against these charges and \$500 in future attorney fees to set aside  
PAGE 4 - COMPLAINT

EXHIBIT A  
PAGE S OF

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1 the record of his arrest. As a further result of this negligence, plaintiff suffered the loss of his  
2 liberty and concomitant emotional distress to his noneconomic damage of \$60,000. As a further  
3 result of this negligence, plaintiff lost the use of his cell phone for approximately 57 days and  
4 suffered the illegal search thereto to his noneconomic damage of \$20,000.

5  
6                   **FIRST CLAIM FOR RELIEF – NEGLIGENCE – COUNT TWO**  
7                   (Against defendant City of Beaverton only)

8                   12.

9                   Plaintiff realleges paragraph 11, above.

10                  13.

11                  Defendant City of Beaverton's employees' arrest of plaintiff without probable  
cause constituted negligence.

12  
13                  **SECOND CLAIM FOR RELIEF – FALSE ARREST – COUNT ONE**  
14                  (Against defendant City of Beaverton only)

15                  14.

16                  In order to violate ORS 165.543, a person must "willfully" intercept another party's  
oral communication. Plaintiff was attempting to record his own voice as he narrated the video  
recording of the arrest. Plaintiff did not willfully intercept the officers' oral communications. By  
reason and belief, the arresting officers could see and hear plaintiff talking into his cell phone and  
therefore knew he was attempting to record his own voice rather than attempting to intercept the  
officer's oral communications. The arresting officers lacked probable cause to arrest plaintiff for  
violating ORS 165.543.

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24                  PAGE 5 - COMPLAINT

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EXHIBIT A  
PAGE 6 OF 14

The arresting police officers intentionally confined plaintiff during the course of the arrest and intentionally caused him to be jailed. Plaintiff was aware of his confinement.

16.

4 As a result of this false arrest, plaintiff suffered the damages alleged in paragraph  
5 11, above.

**SECOND CLAIM FOR RELIEF – FALSE ARREST – COUNT TWO**  
(Against defendant City of Beaverton only)

17.

Plaintiff realleges paragraph 15, above.

18.

Because the arresting officers lacked a reasonable expectation of privacy as to their words spoken aloud while questioning and arresting plaintiff's friend, those same police officers lacked probable cause to believe that plaintiff had violated ORS 165.543. As a result of this false arrest, plaintiff suffered the damages alleged in paragraph 11, above.

**THIRD CLAIM FOR RELIEF – CONVERSION  
(Against defendant City of Beaverton only)**

19.

Plaintiff realleges paragraph 14 above.

20.

Plaintiff was the lawful owner of the cell phone and was entitled to its possession.

20 The arresting officers seized plaintiff's phone without probable cause to believe a crime had been  
21 committed, without a warrant or an exception to the warrant requirement. The arresting officers  
22 intentionally exercised dominion and control over plaintiff's property when they seized plaintiff's  
23 cell phone, when they searched it without a warrant and when officer Buelt deleted a file from

PAGE 6 - COMPLAINT

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1 plaintiff's phone. As a result, plaintiff was denied use and access to his property for  
2 approximately 57 days and lost the original audio and video file the officer Buelt destroyed.  
3 Plaintiff was damaged by the exercise of dominion and control over his phone by defendant City  
4 of Beaverton, by the illegal search of that phone and by the destruction of audio and video files on  
5 the phone in the amount of \$20,000.

6                          FOURTH CLAIM FOR RELIEF - 42 USC § 1983 – COUNT ONE  
7                          (Against defendant Buelt only)

8                          21.

9                          Plaintiff realleges paragraph 14, above.

10                        22.

11                        On or about August 27, 2008, defendant Buelt intentionally seized and searched  
12 plaintiff's phone without probable cause. Defendant Buelt deprived plaintiff of a right, privileged  
13 or immunity secured by the First, Fourth and Fourteenth Amendments to the United States  
14 Constitution.

15                        23.

16                        As a result of the violation of plaintiff's constitutional rights, plaintiff suffered  
17 noneconomic damages of \$10,000.

18                        FOURTH CLAIM FOR RELIEF- 42 USC § 1983 – COUNT TWO  
19                        (Against defendant Buelt only)

20                        24.

21                        Plaintiff realleges paragraphs 14, above.

22                        25.

23                        Defendant Buelt intentionally deleted the audio and video file from plaintiff's cell

24                        PAGE 7 - COMPLAINT

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EXHIBIT A  
PAGE 8 OF

1 phone on or about October 13, 2008, before returning the phone to plaintiff. Defendant Buelt  
2 thereby deprived plaintiff of a right, privileged or immunity secured by the First, Fourth and  
3 Fourteenth Amendments of the United States Constitution.

4 26.

5 As a result of the violation of plaintiff's constitutional rights, plaintiff suffered  
6 damages of \$5,000.

7 WHEREFORE,

8 On plaintiff's first claim for relief, counts one and two, which are prayed for in the  
9 alternative, plaintiff prays for a judgment against the City of Beaverton for \$80,000 in  
10 noneconomic damages, \$925 in economic damages, \$500 in future economic damages and for his  
11 costs and disbursements incurred herein.

12 On plaintiff's second claim for relief, counts one and two, which are prayed for in  
13 the alternative to each other and to the first claim for relief, plaintiff prays for a judgment against  
14 the City of Beaverton for \$80,000 in noneconomic damages, \$925 in economic damages, \$500 in  
15 future economic damages and for his costs and disbursements incurred herein.

16 On plaintiff's third claim for relief, plaintiff prays for a judgment against the City  
17 of Beaverton for \$10,000 in noneconomic damages and for his costs and disbursements incurred  
18 herein.

19 On plaintiff's fourth claim for relief, count one, plaintiff prays for a judgment  
20 against Jason Buelt for \$10,000 in noneconomic damages, his reasonable attorney fees and for his  
21 costs and disbursements incurred herein.

22 On plaintiff's fourth claim for relief, count two, plaintiff prays for a judgment  
23 against defendant Buelt for \$5,000 in noneconomic damages, his reasonable attorney fees and for

24 PAGE 8 - COMPLAINT

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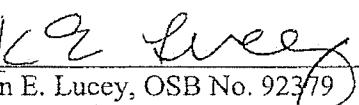
EXHIBIT A  
PAGE 9 OF 13

1 his costs and disbursements incurred herein.

2 On all claims and counts plaintiff prays for any other relief the court deems  
3 equitable.

4

5 DATED this 10 day of July, 2009.

6   
7 Kevin E. Lucey, OSB No. 92379

8 Attorney for Plaintiff

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PAGE 9 - COMPLAINT

EXHIBIT A  
PAGE 10 OF 14

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